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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/572,938	05/10/2006	John Persenda	0505-1062	5035

466 7590 07/09/2010  
YOUNG & THOMPSON  
209 Madison Street  
Suite 500  
Alexandria, VA 22314

EXAMINER
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HELVEY, PETER N.

ART UNIT	PAPER NUMBER
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3782

NOTIFICATION DATE	DELIVERY MODE
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07/09/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DocketingDept@young-thompson.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/572,938	<b>Applicant(s)</b> PERSENDA, JOHN	
	<b>Examiner</b> PETER HELVEY	<b>Art Unit</b> 3782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 4/19/2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 March 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3/22/2006</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election without traverse of Invention 1 in the reply filed on April 19, 2010 is acknowledged.
2. Claims 11-13 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on April 19, 2010.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 4-8, and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by *Malaspina* (US Patent No. 6,585,415).

*Malaspina* discloses a series of bags (10) consisting of two faces joined together around their whole periphery, with the exception of one longitudinal edge, the bag having an opening (Fig. 4) emerging at said longitudinal edge, the two faces of the bag being welded to one another along two opposite lateral edges (28, 30), each face of the bag comprises a hem (16, 18) bordering said opening, in which is placed a non-elastic drawstring (20, 22), it being possible for

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each non-elastic drawstring to be grasped from the outside via at least one notch (12, 14) made through said hems, at least one face having, near said opening, at least one elastic band (24) joined to said face, overlapping the hem or fold, by two connection regions (28, 16 from one side of notch to seam 30; note: the examiner considers the sleeve 16 that contains the elastic band 24 to be a connection region, as the sleeve clearly hold the elastic band to the face of the bag along the length of the sleeve) in such a way that the effective relaxed length of said elastic band between the two connection regions corresponds to the gap between the two connection regions on the bag and is shorter than the length of the longitudinal edge of said face of the bag, characterized in that the elastic band (24) extends across the whole width of the bag, from one lateral edge to the other, said elastic band being welded to the two faces of the bag along said lateral edges (col. 2, ll., 50-55), at least one of the abovementioned two connection regions forming an "intermediate" connection region (16 from one side of notch to seam 30) located at a distance from the abovementioned two lateral edges.

*Malaspina* alternately discloses the other of the abovementioned two connection regions forms another intermediate connection region (16 from one side of notch to seam 28) located at a distance from the abovementioned two lateral edges (28, 30) and from the first intermediate connection region (16 from one side of notch to seam 30) as well as the elastic band being joined to an outside face of the bag (Fig. 10).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Malaspina* as applied to claims 1 and 2 above, and further in view of *McGlew et al.* (US Patent No. 6,164,824, hereinafter '*McGlew*')

*Malaspina* discloses all limitations of the claim(s) as detailed above except does not expressly disclose part of the fold forms the abovementioned hem (16, 18) and extends beyond it by a skirt, said elastic band being joined to the corresponding face of the bag by overlapping said skirt at least partially.

However, *McGlew* teaches placing an elastic band in the extension or skirt of a fold forming a hem in the top of the bag is an equivalent alternative to placing both in the same hem, as taught by *Malaspina*.

Because *Malaspina* and *McGlew* both teach elastic band/drawstring/hem structures for the opening of a bag, it would have been obvious to one of ordinary skill in the art to substitute the double hem/skirt structure taught by *McGlew* for the single hem structure taught by *Malaspina* in view of *McGlew*'s teaching of equivalence (col. 4, ll. 17-27).

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7. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Malaspina* as applied to claim 1 above, and further in view of *Raterman* (US Patent No. 6,921,202).

*Malaspina* discloses all limitations of the claim(s) as detailed above except does not expressly disclose each elastic band is cut longitudinally into two vertically adjacent tapes.

The limitation “is cut longitudinally into two vertically adjacent tapes” is a product-by-process limitations and as such will be interpreted as requiring two vertically adjacent tapes, regardless of whether they are cut from the same original tape or not.

*Raterman* teaches providing multiple vertically adjacent elastic strands at the mouth of a trash bag.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a second elastic band on the device taught by *Malaspina* in view of the teaching of *Raterman*, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Further, it would have been obvious to one having ordinary skill in the art at the time the invention was made to cut the elastic band of *Malaspina* into two sections, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

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Further, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a second elastic band on the device taught by *Malaspina*, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

8. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Malaspina*.

*Malaspina* discloses all limitations of the claim(s) as detailed above except does not expressly disclose the elastic band has a degree of elongation of less than 150%, and preferably of around 100%.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide elastic with whatever particular degree of elongation was desired, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PETER HELVEY whose telephone number is (571)270-1423. The examiner can normally be reached on M-Th 8:00 - 6:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/P. H./

Examiner, Art Unit 3782

June 17, 2010

/Nathan J. Newhouse/

Supervisory Patent Examiner, Art Unit 3782